

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/763,875 Confirmation No. 6010
Applicant : Horton, *et al.*
Filed : January 23, 2004
Title : SYMBIOTIC SYSTEM FOR TESTING
ELECTROMAGNETIC SIGNAL COVERAGE
IN AREAS NEAR TRANSPORT ROUTES
Art Unit : 2688
Examiner : Ekong, Emem
Docket No. : 018360/269788
Customer No. : 00826

Mail Stop Amendment
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313-1450

REPLY TO OFFICE ACTION
37 C.F.R. § 1.111

Sir:

This Reply is submitted in response to the Office Action dated March 10, 2006.

Remarks begin on page 2 of this paper.

REMARKS

This Reply is submitted in response to the Office Action dated March 10, 2006.

Claims 1-28 are pending.

Claim Rejections – 35 U.S.C. § 103

Claims 1-6, 8-10, 18-23, and 25-28 stand rejected under Section 103(a) as being obvious and unpatentable over U.S. Patent 6,711,408 B1 issued to *Raith*, in view of U.S. Patent 5,481,588 issued to *Rickli, et al.*

MPEP § 2142: A *prima facie* case of obviousness requires that the cited prior art reference teaches or suggests all the features of the claimed invention. MPEP § 2142; *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). “The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.” MPEP § 2142; *In re Geiger*, 815 F.2d 686, 690 (Fed. Cir. 1987).

The cited references, *Raith* and *Rickli*, either alone or in combination, do not teach or suggest all the features of the claimed invention.

The *Raith* patent has no relevance to the features recited in the claims. The vehicles in *Raith* are regular passenger cars driven by ordinary wireless telephone users. Among a variety of other differences, the vehicles in *Raith*: (1) are not related to a service enterprise, (2) are not part of a fleet of vehicles, (3) do not serve a territory, (4) are not related to a target area, (5) do not travel along routes, (6) are not assigned according to a dispatch plan, (7) do not operate signal testing units, and (8) do not gather data. The Examiner apparently agrees that these elements are not disclosed or taught by *Raith*:

“However, *Raith* fails to specifically disclose employing a service enterprise having a fleet of vehicles serving a territory near said target area, each of said vehicles assigned to one of a plurality of routes according to a dispatch plan, said dispatch plan comprising vehicle data and route data, and installing one of a plurality of

electromagnetic signal testing units in the vehicle assigned to each of said one or more optimal routes, and receiving data gathered by each of said plurality of signal testing units.” (Office Action at p. 3).

All assertions to the contrary are either false or in direct conflict with the Examiner’s own admissions about what *Raith* fails to disclose. *Raith* offers no disclosure or teaching that is relevant to the pending claims.

One of the several features not taught or suggested in the cited references is the “fleet of vehicles . . . assigned to one of a plurality of routes according to a dispatch plan” as recited in independent claims 1 and 18. None of the cited references teach or suggest the assignment of vehicles according to a dispatch plan. The Examiner’s assertion that “*Rickli* discloses . . . each of said vehicles assigned to one of a plurality of routes according to a dispatch plan” is erroneous. To support the assertion, the Examiner cites “col. 3, lines 24-33” which contains only a general description of the capability of the mobile testing unit.¹ *Rickli* does not disclose a “fleet of vehicles . . . assigned to one of a plurality of routes according to a dispatch plan” as recited in independent claims 1 and 18.

The independent claims 1 and 18 recite patentable subject matter, including a variety of features that are not disclosed, taught, or suggested by either *Raith* or *Rickli*, whether considered separately or in combination. Because the cited references do not teach or suggest all the features of the claimed invention, the rejection does not meet the initial burden of stating a *prima facie* case of obviousness and it should be withdrawn.

¹ “The solution provides for the use of test mobile remote units which are preprogrammed to make and/or receive calls and in so doing are capable of acquiring and storing the relevant data. The relevant data include information on a call which has been made, interrupted, broken off or not established, a change of cell, a change of frequency, the reception level and so forth and, in particular, the location and clock time which are determined by a navigation unit, preferably a global positioning system.” (*Rickli* at col. 3, lines 24-33).

Claims 11-17 stand rejected under Section 103(a) as being obvious and unpatentable over *Rickli* in view of *Raith*.

As explained above, the cited references, *Raith* and *Rickli*, either alone or in combination, do not teach or suggest all the features of the claimed invention. With respect to independent claim 11 and dependent claims 12-17, the Examiner admits that “*Rickli* fails to specifically disclose “[a third executable portion configured to compare said test parameters to said dispatch plan for each of said plurality of route[s]].” (Office Action at p. 10).

The Examiner’s assertion that “*Raith* discloses comparing said test parameters to said dispatch plan for each of plurality or routes” is erroneous, not supported by the text of *Raith*, and is in direct conflict with the Examiner’s own admissions about what *Raith* fails to disclose.

“However, *Raith* fails to specifically disclose employing a service enterprise having a fleet of vehicles serving a territory near said target area, each of said vehicles assigned to one of a plurality of routes according to a dispatch plan, said dispatch plan comprising vehicle data and route data, and installing one of a plurality of electromagnetic signal testing units in the vehicle assigned to each of said one or more optimal routes, and receiving data gathered by each of said plurality of signal testing units.” (Office Action at p. 3).

There is no comparison step disclosed in *Raith* because there are (1) no test parameters, (2) no dispatch plan, and (3) no plurality of routes. The vehicles in *Raith* are regular passenger cars driven by ordinary wireless telephone users.

Independent claim 11 recites patentable subject matter, including a variety of features that are not disclosed, taught, or suggested by either *Raith* or *Rickli*, whether considered separately or in combination. Because the cited references do not teach or suggest all the features of the claimed invention, the rejection does not meet the initial burden of stating a *prima facie* case of obviousness and it should be withdrawn.

Dependent claims 7 and 24 stand rejected under Section 103(a) as being obvious and unpatentable over *Raith*, in view of *Rickli*, and further in view of U.S. Patent 5,752,164 issued to *Jones*. The Examiner admits "the combination of *Raith* and *Rickli* . . . fails to disclose [']wherein said step of installing further comprises providing a universal bracket in each vehicle in said fleet, said bracket configured to releasably receive any of a variety of types of said testing units.[']" (Office Action at p. 9).

Jones does not teach or disclose "a universal bracket . . . configured to releasably receive any of a variety of types of said testing units" as recited in claims 7 and 24. No text in *Jones* can be found to support the Examiner's assertion that *Jones* discloses a universal bracket. The Examiner cites "col. 7, lines 26-40" which contains only a general description of "portable phones with adapter units in automobiles 61 to allow the portable unit to utilize antennas 63 mounted on the exterior of the automobile 61, portable computers, or other communications devices. Examples of such devices include commercially available lightweight telephone handset such as . . . [list of Motorola and other handsets]." (*Jones* at col. 7, lines 26-40). Nothing in *Jones* teaches or discloses a universal bracket as recited in claims 7 and 24. Because the cited references do not teach or suggest all the features of the claimed invention, the rejection does not meet the initial burden of stating a *prima facie* case of obviousness and it should be withdrawn.

CONCLUSION

Claims 1-28 remain pending in the application.

The Applicant requests a careful review of the claim amendments previously presented, the remarks presented herein, and the detailed description of the concepts being claimed in the present application.

The Applicant does not believe any request for extension of time or fees are required, beyond those which may otherwise be provided for in documents accompanying this paper. In the event, however, that additional extensions of time are necessary to allow the consideration of this paper, such extensions are hereby petitioned-for under 37 C.F.R. § 1.136(a) and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC TRANSMISSION

This paper was electronically filed using the EFS-Web, the web-based electronic filing system of the U.S. Patent and Trademark Office, on this, the eighth (8th) day of June, 2006.

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